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WARWICK SEWER
AUTHORITY

February 14, 2005

Juan Mariscal, P.E.
Executive Director
Warwick Sewer Authority
125 Arthur W. Devine Boulevard
Warwick, RI 02886

Re: Narragansett Indian Tribe

Dear Juan:

Enclosed please find a copy of the executed Memorandum of Agreement Between The Narragansett Indian Tribal Historic Preservation Office and the Warwick Sewer Authority for Consultation and Monitoring of Off Reservation Properties Regarding Adverse Effects to Cultural, Spiritual and Religious Resources for your records.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Stephen D. Zubiago

SDZ/mjd

**Memorandum of Agreement
Between The
Narragansett Indian Tribal Historic Preservation Office
And The
Warwick Sewer Authority
For Consultation and Monitoring Of Off Reservation Properties
Regarding Adverse Effects to Cultural, Spiritual And Religious Resources**

THIS AGREEMENT, entered into on June 17, 2004, by and between the Warwick Sewer Authority ("WSA") and the Narragansett Indian Tribal Historic Preservation Office ("NITHPO").

WHEREAS, a Traditional Cultural Property (TCP) can generally be defined as a property that is eligible for inclusion on the National Register of Historic Places because of its association with cultural, spiritual and religious practices or beliefs of a living community that are important in maintaining the continuing cultural identity of that community;

WHEREAS, TCPs are recognized by the United States government as contributing to the historical and cultural foundations of the Nation and these places should be preserved as a living part of our community life in order to give a sense of orientation and historical context to the American people;

WHEREAS, TCPs are essential to maintaining the cultural integrity of many Native American Indian nations including the Narragansett Indian Tribe (the "NIT" or "Tribe") and are critical to the cultural integrity of the Tribe;

WHEREAS, TCPs may be hard to recognize and may not come to light through the traditional archeological or historical surveys;

WHEREAS, the existence and significance of such TCP locations sometimes can be ascertained only through interviews, consultation, and inspection with and by traditional cultural practitioners and Tribal resources.

WHEREAS, the Narragansett Indian Tribe and its predecessors were historically the aboriginal inhabitants of the lands now known as Rhode Island and Providence Plantations;

WHEREAS, the Narragansett Indian Tribe and the WSA wish to ensure the recovery, protection and preservation of any and all Narragansett cultural, spiritual or religious resources located on the NIT aboriginal lands;

WHEREAS, the WSA, is currently, or intends to, carry-out a construction project (the "Project") on the aboriginal lands of the NIT using federal grant funds obtained through a Rhode Island Department of Environmental Management State Revolving Loan Fund

(SRF) which in turn receives its funding from the U.S. Environmental Protection Agency (EPA);

WHEREAS, the EPA has entered into a Programmatic Agreement with the State of Rhode Island (State) related to the SRF wherein State projects funded by the SRF are required to comply with the National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq., the Archaeological Protection Act of 1979, 16 U.S.C. § 470aa-470ll, and the Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001 and laws of the State of Rhode Island.

WHEREAS, the Project is required to comply with the National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq., (NHPA) the Archaeological Protection Act of 1979, 16 U.S.C. § 470aa-470ll, (APA) the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 (NAGPRA) and laws of State of Rhode Island;

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has entered into an agreement with Tribe that allows the Tribe to assume the functions of the State Historic Preservation Officer (SHPO) on tribal lands and provides that the Tribe assumes responsibility under Section 101(d)(5) of the NHPA for reviewing undertaking on tribal lands under tribal regulation.

WHEREAS, the ACHP urges the NITHPO, the SHPO and federal agencies to work in partnership to identify and protect historic properties of significance to the Tribe that are not located on tribal lands and that they do so in a manner respectful to NIT traditional tribal practices and their special knowledge of their history;

WHEREAS, the WSA seeks to include the NIT in its efforts to preserve and protect our nation's heritage as tribal knowledge and resources can enhance the WSA preservation efforts on the Project;

WHEREAS, the WSA has hired an archaeologist to assist in its compliance with applicable federal and state preservation laws;

WHEREAS, The WSA seeks to ensure that it effectively consults with the NIT by and through the NITHPO on Project activities that could affect archeological, historical, sacred and burial sites of the NIT and WSA seeks to ensure that such sites are properly identified and characterized by the NITHPO;

WHEREAS, the NITHPO does not intend to duplicate the work conducted by the archaeologist hired by the WSA but will add additional expertise in the identification and preservation of Tribal cultural, spiritual and religious resources and thereby assist the archaeologist and WSA to comply with federal and state preservation laws and the protection of NIT religious, spiritual and cultural resources.

Therefore, in consideration of the mutual promises set forth in this Agreement, it is agreed by and between WSA and the NITHPO as follows:

1. DEFINITIONS

Unless otherwise defined, words shall have the same meaning provided by 16 U.S.C. §470 et seq. and 26 C.F.R. Part 800.

- A. Aboriginal lands: Those lands or areas historically and traditionally occupied, frequented or used by the Narragansett Indian Tribe to live or subsist.
- B. Archaeological Site: A specific location or area (as defined through archaeological analysis) where human activities have left physical traces such as artifacts and or features.
- C. Cultural Resources: For the purposes of this Agreement cultural resources include, but are not limited to: archaeological materials (artifacts) and sites dating to the prehistoric, pre-contact, historic, and ethno historic periods that are located on the ground surface or are buried beneath it, natural resources, sacred objects, and sacred sites that have importance for the Narragansett Indian Tribe, and that the Narragansett Indian Tribe regard as supportive to their cultural and traditional life ways.
- D. Historic Properties or Historic Resources: Any prehistoric or historic district, site, building, structure, or objects included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or Resource as provided by 16 U.S.C. § 470w(5).
- E. Monitor(ing): Observing the archaeological fieldwork or construction activities conducted by archaeologists and construction professionals employed by WSA relating to the Project, and offering verbal and/or written observations and comments regarding the actual or potential impacts to NIT cultural, spiritual or religious resources by the Project.

2. DESCRIPTION OF PROJECT

The WSA is now performing excavation and construction work pursuant to a loan from a State Revolving Fund (SRF) administered by the Rhode Island Department of Environmental Management (RIDEM) in Warwick, Rhode Island. The SRF in turn is financed by a grant of federal funds from the U.S. Environmental Protection Agency. The Project is being carried out on NIT aboriginal lands. Neither the NITHPO nor WSA wish to disturb NIT cultural, spiritual or religious resources. The parties to this Agreement recognize that cultural, spiritual and religious resources of the NIT may be affected during the course of the Project's activities.

3. CONSULTATION

- A. WSA agrees to engage in consultation with NITHPO as provided in this Agreement and as otherwise required by applicable State and federal laws, regulations, Presidential Executive Orders and federal Agency Memoranda.

B. The NITHPO agrees to provide the WSA with applicable information in a timely manner regarding Project sites that have potential NIT religious, spiritual or cultural significance, to the extent such information can be shared in accordance with NIT Tribal custom and practice. The WSA agrees to meet with to discuss and otherwise consult with the NITHPO regarding any such information provided by the NITHPO.

C. The NITHPO shall be notified of, and allowed to attend, WSA coordination, planning, and logistics meetings or conferences that relate to the excavation of areas impacted by the Project. The WSA shall provide the NITHPO with timely notice of any such meetings. Meetings requiring NITHPO participation include but are not limited to such meetings that discuss historic properties within the Project area, compliance with federal or state laws involving historic resources, excavation, archaeological and surveying reports.

D. The WSA shall provide timely notice to the NITHPO of all reports and draft and final determinations by the WSA that are associated with compliance with the NHPA and related regulations, including such reports and determinations on the presence or absence of NIT cultural, spiritual or religious resources in the Project area and reports and determinations regarding the effect of the Project on NIT cultural, spiritual or religious resources. Such draft or final documents shall be prominently labeled as a "DRAFT DETERMINATION" or "FINAL DETERMINATION" or some equivalent phraseology as appropriate.

E. NITHPO agrees to provide a written response to all draft determinations provided by the WSA within thirty (30) days of receipt of such determination, or as otherwise agreed by the parties. Failure of the NITHPO to respond within thirty (30) days to any draft determination issued by the WSA shall be deemed as NITHPO acceptance of such draft determination. The NITHPO, not later than ten (10) days prior to the expiration of the thirty (30) day period, may request up to an additional period of 30 days to respond to a draft determination and such additional time shall not be unreasonably denied by the WSA.

F. If the WSA finds that the Project activities will have, or may potentially have, an adverse effect on NIT cultural, spiritual and religious resources, WSA shall notify the NITHPO of this determination and submit a proposal to the NITHPO regarding alternatives and/or measures to avoid, minimize or mitigate such adverse effects. If the NITHPO disagrees with any preliminary finding, determination or proposal by the WSA pursuant to this paragraph, WSA and the NITHPO agree to follow the dispute resolution process described in this Agreement at Section 13.

4. MONITORING OF PROJECT

WSA agrees that NIT will Monitor the Project through the NITHPO under the terms and conditions set forth below:

A. NITHPO shall have the opportunity to Monitor the Project to ensure that the Project's excavation and construction, and all matters related thereto, minimize the impact of the Project on NIT cultural, spiritual and religious resources. However, all such activities shall be uncompensated by the WSA except for those activities which are the subject of an approved scope of work. If upon evaluation of applicable information, the NITHPO determines that there is a reasonable basis to believe that on-site NITHPO Monitoring is required because NIT cultural, spiritual or religious resources may be impacted, the NIT shall notify the WSA of such determination and the basis thereof in a timely manner, where practicable, so as not to impede the progress of the Project. Such Monitoring notification shall also include a Scope of Work and an estimate for the cost of such Monitoring.

B. In a timely manner, after receipt of the NITHPO Monitoring notification and proposed Scope of Work, the WSA shall notify the NITHPO that it either concurs with the NITHPO Monitoring notification and the proposed Scope of Work or that it does not concur. If the WSA does not concur with the Monitoring notification or the Scope of Work, it shall provide the basis for the disagreement to the NITHPO and request a consultation with the NITHPO to resolve the disagreement(s). The WSA agrees to resolve any disputes involving a Monitoring notification or Scope of Work in a timely manner in order to ensure that the NIT has an opportunity to minimize the impact of the Project on NIT cultural, spiritual and religious resources.

C. If the NITHPO and the WSA concur pursuant to paragraph B of this Section that Monitoring by the NITHPO is required to fulfill the intent of this Agreement, the NITHPO will thereafter be compensated as a consultant on the Project as agreed to in a separate contract by and between the WSA and the NITHPO for this purpose.

D. When there is a potential area of impact involved, the WSA shall share and make available for inspection by the NITHPO all documents related to any proposed excavation and required by the Project, including but not limited to: designs, specifications, drawings, and reports. WSA shall provide timely notification of any archaeological investigation, survey, study, testing, removal, or excavation of cultural resources at the Project site that has the potential to disturb any NIT cultural, spiritual or religious resources. All NIT cultural spiritual or religious artifacts shall be returned to the NIT.

E. WSA agrees that the NITHPO will be permitted to view any discoveries, remains or cultural artifacts uncovered by the Project; that the NIT will be authorized to conduct site inspections of any archeological discovery or excavation related to the Project, and will be permitted to monitor any archeological excavation, survey, study, or testing on the

Project site. However, all such activities shall be uncompensated by the WSA except for those activities which are the subject of an approved scope of work.

F. WSA agrees to provide the NITHPO with access to all historic and cultural resource monitoring data related to the Project.

G. WSA agrees to provide an opportunity for the NITHPO to observe, participate, and collaborate in the archaeological activities conducted for the Project. However, all such activities shall be uncompensated by the WSA except for those activities which are the subject of an approved scope of work.

H. If, upon evaluation of applicable information, the NITHPO determines that additional archaeological surveillance of a Project area is needed to effectively assess any impacts of the Project on NIT cultural, spiritual or religious resources, WSA agrees that it will enter into good faith consultation with the NITHPO to try to resolve their concerns.

5. CONTINGENCY

In the event that human remains or burial sites are inadvertently discovered, accidentally exposed, or potentially threatened the WSA will immediately contact the NITHPO and consult regarding proper identification, assessment and treatment of such sites, as required by the Programmatic Agreement with EPA, the NHPA, other applicable federal and state statutes including relevant and applicable Code of Federal Regulation provisions shall be followed.

6. CONFIDENTIALITY

The NITHPO shall not be required to provide the WSA directly with any information pertaining to the exact location of any Native American Indian burial sites, archeological sites, or significant sites identified as Native American Indian. However, to the extent required to fulfill the intent of this Agreement and where necessary and reasonable, the NITHPO agrees to provide such information to WSA's agent conducting archeological surveys for the Project, only if such and its contractors have agreed in writing not to release, or allow the release of, any information pertaining to the exact location of any Native American Indian burial sites, archeological sites, or significant sites identified as Native American Indian to the public, unless consented to by the NITHPO or required by law.

7. MONITORING COSTS

WSA shall, upon application, reapplication or renewal of a request for Project grant funds for this Project or related projects that implicate excavation or construction on NIT aboriginal lands seek separate Monitoring funds to identify, preserve and protect NIT cultural, spiritual and religious resources to the extent that such funds are separately available.

8. INDEPENDENT CONTRACTOR

For purposes of fulfilling this Agreement, any employee of the NITHPO is an independent contractor to WSA and will not be considered as an employee of WSA for any purpose.

9. INSURANCE

NITHPO shall acquire liability insurance for NITHPO activities at the Project site in the amount of million (1,000,000) dollars for each occurrence and two million (2,000,000) dollars aggregate coverage. This insurance policy shall also name the WSA as an additional insured party. The NITHPO shall provide the WSA with a copy of a certificate for such insurance coverage prior to the execution of this Agreement. The NITHPO, for purposes of this Agreement and for claims arising out of this Agreement, agrees that it will not instruct its insurance carrier to raise the defense of governmental immunity.

10. INJURIES TO NIT EMPLOYEES

NITHPO waives any right to recovery from WSA or its agents for injury sustained while performing monitoring under this Agreement unless such injury is the result of negligent or willful misconduct by WSA or its agents.

11. INJURIES TO THIRD PARTIES

NITHPO agrees to indemnify and hold harmless the WSA with respect to any claims and/or causes of action brought against it by third parties for damages resulting from injuries to the person or property that are caused in whole or in part by the negligence or willful misconduct of the NITHPO.

12. ASSIGNMENT

This Agreement is nontransferable or assignable by either signatory to a third party without the consent of the other party.

13. DISPUTE RESOLUTION

A. Should NITHPO object to any draft determination or other action carried out or proposed by WSA with respect to the Project or implementation of this Agreement, WSA agrees to consult with the NITHPO to resolve the objection.

B. Prior to any final determination regarding the Project's potential effects on historic properties and the cultural, spiritual and religious resources of the NIT, WSA agrees to provide a reasonable opportunity to NITHPO, EPA, and the Advisory Council on Historic Preservation to comment on the potential effects of the Project on historic properties.

C. If after compliance with 12.A or B above, the objection or dispute has not been resolved, the WSA and the NITHPO agree to make a reasonable and good faith effort to consult for a period of thirty (30) days from the date of written notice of any dispute. After such thirty-day consultation period, if the dispute is not resolved, the parties agree to exhaust any applicable Tribal administrative and civil remedies they may have prior to taking any other action available under applicable law.

D. At any time during implementation of this Agreement, should a member of the public raise an objection pertaining to the matters addressed in this Agreement to the WSA, WSA shall notify the NITHPO and, if appropriate, take the objection into account, consult with the objector and NITHPO to resolve the objection.

E. NITHPO reserves its right to challenge any WSA final determination in both administrative and civil adjudicatory forums.

14. TERMINATION

This Agreement shall be effective upon execution and may be terminated by either party upon thirty (30) days written notice, by registered or overnight mail.

15. NOTICES

Any notice required by this agreement shall be in writing and be sent by overnight or certified mail and sent to:

For the NITHPO:

John Brown
Narragansett Indian Tribal Historic Preservation Office
P.O. Box 700
Wyoming, Rhode Island 02898

For the WSA:

Juan Mariscal
The Warwick Sewer Authority
125 Arthur W. Devine Blvd.
Warwick, Rhode Island 02886

16. MODIFICATION

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party.

17. GOVERNING LAW AND VENUE

This Agreement shall be governed by, construed and enforced in accordance with applicable federal and Rhode Island state law, and the parties agree that any litigation arising from this Agreement shall be venued in the State of Rhode Island.

The parties through their duly authorized representatives do hereby execute this Agreement:

THE NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE

By: Doug Harris

Title: Deputy T. H. P. O.

Date: 6/20/04

THE WARWICK SEWER AUTHORITY

By: Juan Morales

Title: Executive Director

Date: 6-17-04